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经济、社会和文化权利

受教育权

特别报告员弗农·穆尼奥斯的报告

增 编*

对博茨瓦纳的访问
(2005年9月26日至10月4日)

* 内容提要以所有正式语文分发。报告附于内容提要之后，仅以原文分发。本报告在最后限期之后提交是为了收入最新资料。

内 容 提 要

教育权问题特别报告员于 2005 年 9 月 26 日至 10 月 4 日访问了博茨瓦纳，以讨论博茨瓦纳是如何实施受教育权的，为顺利落实这项权利采取了哪些措施，以及在国家和国际各级碰到了哪些障碍。

博茨瓦纳几乎已经达到普及小学教育和男女平等的目标。然而，博茨瓦纳也面临着以下挑战：博茨瓦纳社会属于多语言、多文化性质，必须确保所有团体都在所提供的教育中找到自己的位置；艾滋病毒/艾滋病流行，需要投入大量的资源和精力来防治这一流行病；人口相对稀少，土地开阔而处于半干旱状态，因此该国许多地方没有学校，而且传统的歧视继续存在，使中学女生辍学率相对增加，特别是因早孕而辍学。

特别报告员感到遗憾的是，未能从人权角度对待教育问题，这导致了国内教育指数不均衡。他认为，如果将受教育权和其他有关人权纳入政府的政策，便能强化政府目前的教育战略中的关键内容。

由于没有从人权的角度对待教育问题，因此，人们将教育视作是政府提供的一项服务，而不是一项人权。正因为如此，政府决定在初中重新收学费，初中的入学率因而降低，辍学率增加。特别报告员呼吁当局撤回这一措施，因为这是一大倒退，有损于在教育领域已经取得的进步。

本报告考虑到博茨瓦纳的历史和经济社会背景，并根据其国际义务，回顾了在实际受教育权方面所取得的成绩和面临的问题。报告着重讨论了学校设施、在就学方面存在的地理、财政和族裔/性别方面的歧视、以及所提供的教育的内容和质量问题。

特别报告员非常感谢博茨瓦纳政府邀请他访问博茨瓦纳，感谢他所访问的教育机构和他在访问过程中所遇到的个人。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO
EDUCATION, VERNOR MUÑOZ, ON HIS VISIT TO BOTSWANA
(26 September to 4 October 2005)**

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Introduction

1. At the invitation of the Government of Botswana, the Special Rapporteur on the right to education carried out a mission to Botswana from 26 September to 4 October 2005 in order to understand, in the spirit of cooperation and dialogue, how Botswana endeavours to implement the human right to education, the measures taken for its successful realization and the obstacles encountered both at the national and international levels. The Special Rapporteur expresses his sincere appreciation to the Government for the cooperation extended to him throughout the course of his mission. In particular, he is grateful to the Minister of Education and staff at the Ministry of Education, with a special mention to the Department of Primary Education. He also extends his thanks to the United Nations offices in Botswana, especially those of the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) and the acting Resident Coordinator, as well as to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for assistance in facilitating a full and diverse programme of work.

2. Throughout his mission, the Special Rapporteur paid particular attention to the impact of HIV/AIDS and gender discrimination, as well as to a range of more specific issues detailed throughout the present report, such as the reintroduction of school fees and intercultural education. The report does not purport to address in depth all issues related to the right to education in the country.

3. During his mission, the Special Rapporteur held consultations with a wide range of actors, including representatives of various ministries of the Government of Botswana, representatives of the local authorities, international organizations, non-governmental organizations (NGOs), education professionals and professional associations, primary and secondary school students and visually impaired students. He had the honour to be received by the Minister of Education. He also met with representatives of the Ministry of Education, including the Permanent Secretary of the Minister of Education, the Permanent Secretary of the Ministry for Foreign Affairs and International Cooperation, the Under-Secretary for Political Affairs in the Office of the President, the Permanent Secretary of the Ministry of Labour and Home Affairs together with the Director of Culture and Youth and the Director of Women's Affairs in the Ministry; the Permanent Secretary of the Ministry of Finance and Development Planning, as well as the Permanent Secretary and senior officials of the Ministry of Local Government. He also met with the District Commissioner of Kagleng, the Council Secretary of the District and members of the Council, the Council Secretary and members of the Council of Mahalapaye. The Special Rapporteur also met with the Ombudsman. He held discussions with staff of several United Nations organizations including UNDP, UNICEF, the United Nations Population Fund (UNFPA), the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The Special Rapporteur also consulted with representatives of civil society. He held a meeting with teachers unions, including the Botswana Federation of Secondary School Teachers.

4. Over the course of his mission, the Special Rapporteur visited several schools, hostels and education centres. In Gaborone, he visited Block 5 Primary School, Gaborone West. He

also visited remote area dwellers schools with hostels, and more specifically the Khurutshe and Kgomodiatshaba primary schools, in the district of Artesia, and the Diphilana project in Mahalapaye.

5. The Special Rapporteur expresses his sincere gratitude to all those whom he met. He also expresses his deep appreciation for the warm atmosphere in the meetings he had and for the constructive self-criticism expressed by some of his interlocutors at the governmental level, which allowed him to appreciate the unequivocal commitment of the Government to provide education to all.

I. HISTORICAL AND SOCIO-ECONOMIC CONTEXT

History and development prospect

6. Botswana is a landlocked country in Southern Africa, a former British protectorate. When it gained independence from the United Kingdom of Great Britain and Northern Ireland in 1966, Botswana was amongst the poorest of the world's least developed countries. Cattle was the main resource, coupled with a relatively vast territory of about 582,000 square kilometres of semi-arid land and wildlife. The country had a small and overwhelmingly illiterate population of about 500,000.

7. As a colony and also immediately following independence, Botswana suffered from a perception of limited development potential and resulting lack of investment in physical and institutional infrastructure.¹ In 1966, the national budget was less than US\$ 1.5 million, over 80 per cent of the population lived in rural areas, most of the country had no roads, electricity, safe drinking water or health facilities, far less than half of all children attended primary school, and very few went on to enrol in the six missionary secondary schools that existed.²

8. Progress since independence has been remarkable, significantly due to the discovery and effective management of mineral wealth, good policies and accelerated investment in the provision of basic services. Education is one of the areas in which greatest investments and progress have been made.

Geographic specificities

9. Botswana is a relatively large country divided into nine districts and its capital is Gaborone. According to the 2001 population census,³ the population of nearly 1.6 million is mostly concentrated in the eastern reaches of the country, also the most developed areas. Although it has increased from 1991 to 2001, especially in the big cities of Francistown and Gaborone, population density remains low at 2.9 persons per square kilometre.

10. Over 54 per cent of the population lives in urban areas.⁴ Despite growing urbanization, remote rural areas remain where the total population would hardly exceed 500 - or be even less than 100. Such scattered human settlements, especially in the West, as well as the nomadic lifestyle of the indigenous population of the country - the Basarwa/San or Kheosan - represent

one of the challenges Botswana faces to ensure an equitable and homogeneous distribution of wealth and services, as well as for ensuring the protection and enjoyment of human rights of these populations in accordance with their specific needs.

The multicultural and multilingual nature of the country

11. The people of Botswana (Batswana) are composed of numerous local ethnic groups, such as the Bangwato, Bakgatla, Bakwena, Batawana, Bakalanga, Batswapong, Barolong, Bangwaketse, Bayeyi, Basarwa, Bakgalagadi, Babirwa and Baherero. Twenty-six minority languages are spoken in the country, among which 11 have been identified as belonging to the Basarwa culture.⁵ Thus the linguistic situation of Botswana can be described as moderately complex. English has been established as the country's official language, while Setswana⁶ - and its myriad dialects - was maintained as the national language.

12. Studies conducted in the past five years have confirmed the multilingual nature of the country; most people speak their local mother tongue(s) at home, while English and Setswana are used in the public and formal spheres. Most Batswana speak three to four languages.⁷ The main problem lies with the cultural dimension of each of the different languages. Botswana has not recognized fully the minority and indigenous status of some groups. Citizens are often referred to as "peoples", in the belief that the term would be understood as an acknowledgement of the existence of the various groups within their borders. Despite the establishment of a Botswana National Cultural Council aiming at reflecting the culture of the different regions of the country through cultural activities, in practice, and in order to avoid tribal conflicts, integration practices seem to prevail. In Botswana, the Basarwa are indigenous and also constitute political, economic and social minorities.⁸ Intercultural and multilingual education represents a clear challenge for the country which, at the same time, tries legitimately to preserve and strengthen a cultural, social and political unity.

The challenge of the HIV/AIDS epidemic

13. Since the first case was reported in the country in December 1985, the HIV/AIDS epidemic has progressed rapidly, affecting all levels of society. The effect of the pandemic has reversed previous health gains, resulting in increased mortality. Female mortality is very high between the ages of 18 to 34 while male mortality is very high from the mid-thirties and remains very high from then on. The increase in mortality has also reduced life expectancy at birth,⁹ and increased child mortality.¹⁰

14. Although numbers vary according to the sources, there is agreement over the gravity of the situation. Botswana has one of the fastest growing HIV/AIDS infection rates and the highest prevalence rate of HIV in the world. By 1999, about 300,000 people (close to one third of the population) were estimated to have been HIV-positive.

15. Many children are orphaned by HIV/AIDS. In 2000, there were about 78,000 children below the age of 15 who had lost one or both parents. Though 87 per cent of the orphans have one parent still alive, 34 per cent are entrusted to their grandparents and 11 per cent live with

other relatives. Fifty-six per cent of orphan children live with heads of households who are not economically active. Many of the orphans leave school, either to work to help the family or take care of their siblings at home.

16. HIV/AIDS prevalence is also high among adolescents; in 2000 the estimated prevalence rate among the 15- to 19-year-olds was 27 per cent, with girls at greater risk of infection. Despite extensive public awareness and education campaigns, many young people still do not have adequate information on HIV/AIDS prevention to help them adopt a risk-free behaviour. About 90 per cent of the population does not know its HIV status even though counselling and testing facilities are available in various parts of the country.¹¹ For 10- to 14-year-old children, the prevalence rate is 2 per cent. Prevailing socialization patterns disempower girls and make them more vulnerable to forced sex, early pregnancy and contracting HIV/AIDS. With a high primary school enrolment rate, schools provide a crucial forum in which to transmit information to help prevent further spread of the virus.

17. Botswana expects that by 2016 there will be no new infections.¹² Positive behavioural changes remain the key response to reducing the incidence of infection. The remaining cultural taboos on which the epidemic thrives must be broken through sustained advocacy and education, to facilitate acquisition of life-skills knowledge and behaviour.

Cultural gender discrimination

18. Although Botswana has made significant progress towards achieving gender equality over the last two decades, women do not yet enjoy equal treatment. Institutional practices and social attitudes respond with a lag to progressive legislation and policy. Official documents from private and public institutions may still have provisions that discriminate against women, and tradition and custom often limit the range of women's activities. Even when the legislation is gender neutral, traditional and institutional culture perpetuate practices that disadvantage women. For instance, some financial institutions and public departments treat married women as de facto minors, requiring them to seek their husbands' consent for some transactions.

19. However, women's representation in decision-making positions, including political office, senior management in both the public and the private sector, and even in traditional male domains,¹³ has risen. The trend is more tangible in the public sphere. On a more private level, there is still need to address more difficult issues such as rape within marriage or the need for equal age of marriage for boys (16 years) and girls (14 years). Various interlocutors of the Special Rapporteur suggested that violence against women and girls - rape, incest, murder and passion/honour crimes - seem to be increasing.¹⁴ The issue of intergenerational sex and its negative impact on girls' life was also often mentioned. Gender-based violence, together with early pregnancies, is a serious impediment not only to girls' access to school, but to their successful completion of the curricula. The education system should tackle these issues in a more systematic manner.

20. Botswana has ratified the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, and signed the Southern African Development Community Gender and Development Declaration. However, it remains difficult

to translate the international norms and standards into national legislation. In collaboration with civil society organizations, the Government developed a National Gender Programme Framework in 1998 to translate international instruments into domestic laws and policies. The Government has also put in place a National Policy on Women and Development. The Women's Affairs Department of the Ministry of Labour and Home Affairs is responsible for the implementation of the policies which should be reflected in education programmes working towards girls' empowerment, as well as building a responsible masculinity, sensitive to the needs of both women and men.

II. THE RIGHT TO EDUCATION: PRINCIPLES, NORMS AND STANDARDS

A. International legal and policy framework

21. The Government of Botswana has ratified the International Covenant on Civil and Political Rights, as well as other major human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. These treaties contain important provisions related to the right to education and provide a framework for legislation and policy at national level.

22. However, while the Government of Botswana has ratified many international instruments that provide for the right to education, it has not ratified the International Covenant on Economic, Social and Cultural Rights, though it is now closely reviewing its related obligation to such ratification.

23. In accordance with the relevant provisions of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as interpreted in the general comments adopted by their treaty monitoring bodies, the right to education includes the right, inter alia, to non-discriminatory access to and availability of quality schools, services and infrastructures, appropriate, adequate and quality education provided to students and an education adapted to the social and cultural environment. Primary education should be compulsory and free. In short, the right to education can be understood as a right to the enjoyment of a variety of facilities, goods and services necessary for the realization of that right. A State party to the Covenant or the Convention has an obligation to ensure the realization of the right to education (for all or for children) to the maximum of its available resources.

24. In view of its ratification of international legal instruments such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child, the Government of Botswana has an obligation to respect, protect and fulfil the right to education for those within its jurisdiction. The international community also has a responsibility to assist Botswana in the fulfilment of its human rights obligations, including through international assistance and cooperation.

25. In addition to its international legal obligations, the Government of Botswana has committed to achieving various education-related goals through its participation in recent international and regional conferences including the World Education Forum, the Millennium Summit at the sixtieth session of the General Assembly, the International Conference on Population and Development, the Fourth World Conference on Women, the World Summit for Social Development, the United Nations General Assembly Special Session for Children, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the United Nations General Assembly Special Session on HIV/AIDS, and the African Summit on HIV/AIDS.

B. Domestic legal framework and national policies

26. The Constitution of Botswana enshrines a Bill of Rights which provides for fundamental freedoms and basic human rights that promote equality and protection before the law. The Constitution guarantees that all citizens shall enjoy the same rights and duties without discrimination, but does not make specific mention of the right to education.

27. The Education Act of 1966 provides the legal framework for the development of education and related services. The Act was revised in 1977 and is known as the Education for Kagisano - Education for social harmony - aimed at making education available to all and at providing for nine years of basic education. The second revision, finalized in 1994, aimed at ensuring that the education system would assist the country in its transition from a traditional, agriculture-based economy, to a more industrialized economy. The Revised National Policy on Education, which is currently being implemented, frames the organizational aspect of school life, defines the responsibilities of the various ministries and defines the national educational policy that should guide any action at the local and school levels. Although primary education is free in practice, the Education Act does not legally provide for free and compulsory primary education.

28. The Government has endeavoured to translate its education commitments into operational initiatives at the national level, including through its National Development Plans - the overall strategy for the economic development planning process. In the framework of its ninth national development plan (2003-2009), the country has adopted a National Action Plan for Education aiming at realizing the goals of the Dakar Framework for Action (Education for All). It builds on the country's major achievements in the field of education and should be seen in the framework of "Vision 2016", which refers to the target date identified by the Millennium Development Goals and was the outcome of a presidential Task Force, established in 1997 to identify a long-term vision for the country.

29. An independent and properly-resourced national human rights institution can help promote and protect human rights, including the right to education, working closely with Government and civil society. The main task of the Ombudsman in Botswana is to investigate maladministration, especially in prisons and hospitals. The Ombudsman does not act as a human rights commission and does not, in practice, deal with human rights issues. In his meeting with the Special Rapporteur, the Ombudsman expressed the view that the right to education could not be considered a justiciable right. The Special Rapporteur recalls that the right to education - as other economic, social and cultural rights - is in fact both enforceable and justiciable.

III. ACHIEVEMENTS AND CHALLENGES IN REALIZING THE RIGHT TO EDUCATION

30. Education has been a key development priority for Botswana since independence. According to the Revised National Policy on Education, priority is given to universal access to basic education, equity and quality education.

31. The overall responsibility for providing education is divided among the Ministry of Education, the Ministry of Labour and Home Affairs and the Ministry for Local Government. The Ministry of Education is mainly responsible for the design and publication of education policies, drawing up the curriculum and the training and hiring of teachers and their affectation to the various schools in the country, as well as the supervision of schools. The Ministry of Labour and Home Affairs is responsible for designing policies related to vocational training, in cooperation with the Department of Vocational Education and Training in the Ministry of Education, and is responsible for the provision of infrastructure and school supplies, including books. Its decisions are implemented at the local level by the Ministry of Local Government through its district councils.

A. School facilities

32. The country has over 782 schools, of which 59 are private schools. The vast majority of the schools are concentrated in the south and east of the country.

33. The printing, editing and reproduction of books and manuals are subcontracted by the Government to private actors, though the Ministry of Education will ensure that their content is appropriate to the curriculum. Books are produced in both English and Setswana. Each school identifies its needs for books and other school materials and transmits the request to the local council, which submits a consolidated request to the Ministry of Local Government which itself liaises with the Ministry of Education. Books are made freely available and should reach schools prior to the beginning of the school year. The system seems to function in a suitable manner, though there are instances where books do not reach the schools on time or regularly, particularly in schools in remote areas, and especially in the western part of the country.

34. The Government has actively engaged in the construction of new schools and additional classrooms in existing ones, reducing the shortage of classrooms from more than 2,000 in the early 1990s to less than 200 recently, a shortage that can vary in different regions.

35. The Special Rapporteur visited Block 5 Primary School in Gaborone West, as well as the only school in the country which provides specific facilities for visually impaired children in the district of Kagtleng; he also visited two primary schools for remote area dwellers in the area of Artesia and Moduchi, and a primary and pre-primary as well as a secondary school in Mahalapaye.¹⁵

36. All the schools visited globally responded to the same architectural and security norms and standards. All schools are boarding schools and provide for hostel facilities. Schools are usually built close to relatively important human settlements, thus leaving various parts of the

country without school facilities. Hostels are therefore key to accommodate children living too far away from existing schools. The Special Rapporteur noted the difficulty for children as young as 6 years old to be separated from their families in order to attend school, though he acknowledges governmental efforts and investments in providing acceptable school and hostel facilities. The schools he visited provided for adequate and separate sanitation for boys and girls as well as for, at least, a meal per day. He was informed that, despite the efforts of the Government, there are still remote areas where adequate standards for acceptable learning are still not fully met by local schools or where classes are imparted in the open due to lack of classrooms. He would therefore encourage the Government to make all possible efforts to ensure that remote areas are provided with school facilities of the same standards as in the capital and other big cities. He would also encourage acceleration of a pilot programme initiated by the Government to create single multilevel classrooms in the most remote areas, in order for children to be able to attend school while remaining close to their families. A recently conducted survey identified 49 settlements that qualify for the programme.

37. The lower the pupil-teacher ratio, the greater the amount of time the teacher spends with each pupil and the greater the quality of the instruction. Official statistics mention a ratio of 27 to 1, which is below the 30 pupils per class target of the latest National Development Plan but is much higher than the statistics of 16 pupils per class in private schools. Although a ratio of 30 to 1 appears to be closer to reality, in some instances the number can exceed 40 pupils per class. Most of the teachers with whom the Special Rapporteur met emphasized some contradictions and shortages in the education system. For instance, and despite often crowded classrooms, the Ministry of Education has stopped recruiting teachers and the Special Rapporteur met unemployed qualified teachers. However, training continues to be provided to a growing number of future teachers, the majority of whom will not find a job corresponding to their qualifications. A recently-ended government policy recruited specialized teachers from abroad. Teachers from Guyana have, for example, been recruited in the past six years. The Special Rapporteur met one such teacher, specializing in early childhood learning, who was running a pre-primary school in the District of Kagtleng. However, it would seem that shortage of primary schoolteachers and lack of teachers' accommodation are the main reasons for a high pupil-teacher ratio at primary level. At secondary level, whilst there exists a teacher surplus in some subjects, there is shortage in others, especially newly-introduced ones. Training has not been adequately geared to the needs of the education system and teachers' unions have called for rationalization of training policies, recruitment and affectation of teachers.

38. Assignment of teachers by the Ministry of Education, based on the needs of the schools and teaching service, can result in teachers from one area being placed in schools in other areas, in some cases interacting with children whose culture and mother tongue the teachers do not know. Mandatory assignment to remote areas can also lead to tension and resentment among teachers.

39. Teacher unions and teachers have highlighted the need to increase salaries and improve precarious living conditions, especially in remote areas. In some instances, teachers live in the schools, using some of the hostels' facilities or sleeping in the classrooms. Similar facilities should be provided to all teachers wherever they are affected, and the Government should

prioritize the appropriate training of teachers from the most remote areas who can share the culture of the students and provide role models for children in those areas. The Government should also put in place incentive measures that would encourage teachers to serve in remote areas.

40. Despite progress in the fight against HIV/AIDS thanks to the availability of antiretroviral therapy, the HIV/AIDS epidemic means that many teachers cannot fulfil their duties due to the illness and need to remain close to appropriate health-care centres in order to receive treatment. Absenteeism of teachers has been identified as one of the impediments to a smooth management of schools. Significant mortality rates for teachers are affecting the entire education system.

B. School accessibility

1. Economic and financial accessibility

41. Since 1980, Botswana has provided free education at primary and secondary levels. The policy has been a major contributing factor to the significant progress achieved in net enrolment rate, especially at primary level. Indeed, Botswana has an official estimated net enrolment rate of over 90 per cent at primary level with the rate for the secondary level of education at approximately 51 per cent. The Special Rapporteur was informed of the intention of the Government to reintroduce, in January 2006, school fees of 5 per cent of the actual cost at junior secondary level, which represents the first years of secondary education and forms part of basic education as determined by the Government.¹⁶

42. According to official and governmental sources, the reintroduction of school fees is justified by increasing public financial constraints. Botswana has invested a lot in education, which represents an average of 25 per cent of the national budget - with small variations depending on the years. The decision was apparently taken as a result of the comprehensive national consultation process, initiated in 1992 and completed in 1993. The results of the consultations were published in a lengthy national report in 1993 which was used to design the second revised national policy on education of 1994. In the course of the consultations, people were requested to comment on the possible reintroduction of fees, presented as a cost-sharing measure, and a majority of those consulted were in favour of the reintroduction of fees. Parents would contribute up to 5 per cent of the public expenditure on education, amounting to 900 pulas per year per student.

43. The authorities assured the Special Rapporteur that in implementing the measure, they will make sure that children whose parents cannot afford the fees will not have any obligation to pay nor will they be excluded from school. Some of the teachers and individuals met by the Special Rapporteur argued that the reintroduction of fees would have minimal financial incidence on households as it only represents 5 per cent of the total cost of education and would be a way of involving parents in the school life, getting them more implicated in the education of their children and valuing education more.

44. Although convinced of the good faith of the Government, the Special Rapporteur must express his deep regret at the decision to reintroduce school fees, which would represent a step

backward in Botswana's extraordinary achievements in education, for which cost-free education has been one of the main contributing factors. He particularly regrets the reintroduction of fees at junior secondary level, which is the level where enrolment decreases and major dropouts are registered. The Special Rapporteur fears the dropout rate will be aggravated by this new financial constraint.

45. The Special Rapporteur considers that the absence of a rights-based approach to education might have contributed to the adoption of the decision. Education is considered a service provided by the Government and not a human right of the people living under its jurisdiction, and is not compulsory. Future financial constraints could thus result in increased participation of parents in the financing of their children's education. The reintroduction of fees, coupled with the absence of the legal obligation providing for compulsory education might have disastrous effects on enrolment rates at secondary level and the already increasing dropout rate registered at that level. The Special Rapporteur believes the lack of a rights-based approach to education also explains discrimination against non-nationals who, unlike nationals, have to pay fees even at primary level. In the same way, he is concerned about refugees not being granted the same rights as nationals and not having access to free education.

46. The Special Rapporteur had lengthy and numerous discussions with the authorities on the issue of school fees and warned them against their medium-/long-term economic and social costs despite the short-term budgetary gains the measure would generate. Education should not be seen as a cost but rather as an investment. The Special Rapporteur understands the budgetary constraints facing the Government but would encourage it to continue its review of possible measures, other than the reintroduction of fees, to ensure the sustainable financing of education.

47. Studies at the international level confirm that direct enrolment fees represent an important burden on households. The Special Rapporteur encourages the Government, if it maintains its decision, to assess carefully and objectively its effects and to be ready to withdraw it if the negative consequences he expects can be observed. He acknowledges the importance of the consultation process that has led to the decision to reintroduce fees; however, he is not sure that those who could most suffer from that measure were appropriately consulted.¹⁷

2. Geographic accessibility

48. The country has many small human settlements, which make it extremely difficult, some would say impossible, for the Government to provide schools in each and every settlement. The authorities have established the limit of 500 inhabitants per area in determining where a boarding school should be available. Settlements with less than 500 people would not benefit from walking-distance school facilities. The Government has thus invested in schools with hostels that would accommodate all the pupils who live far away from the school. In building the schools, the Government has intended to reduce, on average, the distance to school to 5 kilometres for primary schools and to 10 kilometres for secondary schools.

49. Despite these efforts, in numerous instances children have to walk longer distances while most education professionals are not satisfied by the "5/10 kilometres policy". They consider 5 kilometres an unacceptably long distance for children aged 6 to 10, and 10 kilometres

also unacceptable for older children. Those distances oblige children to wake up before dawn to reach school on time, and the particular vulnerability of girls facing lengthy walks in the dark was also highlighted. Some schools have made efforts to ensure that breakfast is offered to their pupils.

50. The Government also provides for the transportation of children residing in hostels, from school to their villages for official holidays. But, although buses are made available, they do not cover the whole country and do not respond to all the needs and in many instances, trucks are used to transport children at clear risk to their safety. The Special Rapporteur requested the authorities to take all necessary measures to ensure appropriate and safe transportation for pupils.

3. Non-discriminatory access

51. Botswana has eliminated gender disparity in most formal education. Girls' enrolment in primary and secondary education is equal to that of boys. Enrolment in teacher training colleges - like nursing education - is skewed in favour of women, whilst enrolment in vocational training institutions is skewed in favour of men. Similarly, at the university of Botswana and its affiliated institutions, men dominate science-based training and women dominate the humanities and some social sciences.

52. Significant differences can also be found in respect of gender-specific vulnerabilities that are linked to schooling. For instance, one of the main reasons girls drop out of schools is pregnancy, the incidence of which among teenage students is high. Government policy encourages girls to return to school if they had left due to pregnancy. The Special Rapporteur had the opportunity to visit the Diphilana project centre. This project is linked to a secondary school in Mahalapaye and offers a day-care centre for babies thus allowing their adolescent mothers to re-enrol in school and continue their education. The project is a governmental initiative supported by UNICEF and it also provides for training of adolescent mothers on their role and extends to pregnant girls. The project also intends to train the fathers on their role and responsibilities. The project has proven so effective at reducing the number of teenage pregnancies, that it must now redefine its mission.

53. Pregnancies due to intergenerational sex were also mentioned as a major, and worrying, cause of girls' pregnancies. In some instances, the teachers themselves could be involved. The Special Rapporteur received conflicting information as to the extent of the phenomenon, with personnel working on projects for teenage mothers noting the pregnancies result from same-generation sex, though noting that girls are often involved in sexual relations that may not be fully consensual.

54. Countrywide research and information provided to the Special Rapporteur confirmed that low income increases the vulnerability of young people to early and intergenerational sex and HIV infection. The "sugar daddy" phenomenon appears to be widespread among young women from low-income groups, who have sexual relations with older men - often for material gains and gifts such as mobile phones, clothes, car rides and hairstyles.

55. In addition to gender discrimination, and although Botswana has almost achieved universal primary education, there are other disparities in access to education, with some children never attending school at all. Moreover, although dropout rates have slowly declined over recent years, the number of those who drop out is still a cause of serious concern. School attendance and dropout rates are among the key indicators of the successes and failures of any country's education system. The economic and social consequences of ending secondary school without a school-leaving certificate are severe, as those who drop out are more likely to be unemployed than those who graduate. Young girls who drop out are more likely to get pregnant at a younger age - if they are not already dropping out because of pregnancy - and more likely to be single parents than high school graduates.

56. Absenteeism among students is also a growing concern. Often children attend school irregularly. Besides part-time child labour or family responsibilities, the spread of HIV/AIDS has been an aggravating factor for that trend. As mentioned earlier in the present report, many children have lost at least one of their parents as a consequence of HIV. The particular vulnerability of such orphaned children is being tackled by the Government, which makes every effort to provide them with assistance by, inter alia, ensuring that any school-related costs will be borne by the authorities, and to ensure that those children will continue their studies rather than enter the labour market. The Special Rapporteur wishes to pay tribute to the social workers who are the indispensable link between the children, the teachers and the Government.

57. Based on the 2001 population and housing census, about 74 per cent of 5- to 19-year-olds attend school. Approximately 12 per cent of the 5- to 19-year-olds have left school, with a slightly higher level of girls' drop out. However, about 12 per cent of children from 5 to 19 years have never attended school, and a slight majority of those are boys. A global survey would almost certainly show that the majority of those who never attended school come from rural areas. The Government has made efforts to promote education for children of people the State has designated as "Remote Area Dwellers" (RADs), defined on the basis of their: spatial location (remote areas outside villages), socio-political status (marginalized) and socio-economic status (poor and subject to discrimination).

58. The number of people designated as RADs varies depending on the source of information, but an estimate of RADs ranges from 60,000 to 100,000 among which approximately 50,000 are Basarwa/San. One of the major problems of RADs in Botswana is that some of them live in areas not only outside of gazetted villages¹⁸ but also outside of remote area settlements where there are schools. The Special Rapporteur received conflicting information, with some sources indicating that, today, most of the San are no longer nomads and live in small villages and settlements, while other sources, including official ones, referred to the nomadic way of life and mobility of the San as one of the reasons for their reluctance to send their children to school. This mobility was also seen as justifying the relocation of San people from the Central Kalahari Game Reserve to New Xade in Ghanzi District and Kaudwana in Kweneng District. The Special Rapporteur acknowledges that schools were available in the places where the San were relocated. He regrets that he did not have the opportunity to meet members of the San community to get first-hand information and their direct account of the situation.

59. The Special Rapporteur was also provided with studies showing that minority-dominated areas - most of which are rural and where Basarwa live - such as Kgalagdi, Kweneng West and Ghanzi have the highest dropout rates and the highest number of teachers who are not properly trained and sometimes not trained at all. The 2001 population and housing census indicated that in Ghanzi, only 19 per cent of the population use Setswana at home. The poor school results, together with the high dropout rates, are seen as the result of cultural differences between the local population and the teachers.¹⁹

60. Thus, despite the remote area development programme (RADP) implemented by the Government since 1974,²⁰ as well as the Government's efforts to provide 10-year basic education to all, as outlined in the revised policy on education, there still exist significant disparities in access to education between urban and rural populations. As the number of those who never attended school is bound to undermine the major achievements of the country over the last two decades and the drive to realize the national goals stated in Vision 2016, national efforts should be concentrated on addressing the rural/urban disparity in access to education.

C. Content and quality of education

61. Concerns have been raised about whether Botswana's education adequately prepares young people for life after school, especially in view of growing unemployment amongst people with tertiary qualifications. Although unemployment is not necessarily a result of deficiencies in education and training, adult literacy indices and learning achievement indicators can help assess the adequacy and quality of education in Botswana. In 2001, an assessment of the effectiveness of learning at primary school suggested that learning is not effective at the early primary school level, which may reflect lack of preschool training. Only 39.6 per cent of primary level pupils were literate in Setswana, 21.9 per cent had reached the desired competency level in English and only 21.2 per cent had done so in basic numeracy. Learning achievement in life skills was, however, high at 77.7 per cent, though only 51 per cent of the pupils had attained the desired level of HIV/AIDS competence.²¹

62. The Special Rapporteur highlighted in the course of his visit the interconnectedness of quality education and human rights education. He welcomed the fact that Botswana acknowledged its needs to improve the quality of education which should also be geared towards the country's needs and identity. Human rights education should be seen as an integral part of the curriculum and would help the efforts of the Government towards promoting education of quality.

1. Early childhood and preschool education

63. The Revised National Policy on Education (RNPE) and the Early Childhood Care and Education Policy (ECCEP) provide a framework aimed at raising the quality of education in the country. The Special Rapporteur notes that RNPE gives priority to enhancing quality educational inputs - school infrastructure and equipment, information communications technologies, trained teachers, lifelong learning and a strong curriculum that puts emphasis on science and technology. ECCEP, in turn, provides for expanded access to preschool education and an appropriate curriculum.

64. Preschool education is a key component of integrated early childhood development programmes. About 90 per cent of eligible children do not access preschool education, either because preschool facilities do not exist where they live or because their parents cannot afford the fees or choose not to enrol their children for preschool - sometimes because they do not see the value and utility of such education. Nearly all preschool education is provided by civil society organizations, including the private sector, and preschool remains hardly accessible to children from poor families and rural areas.

65. The Special Rapporteur had the opportunity to visit one preschool facility and was impressed by the quality of its infrastructure and management. He was also informed of pilot projects aiming at minimizing the cost of preschool teaching by integrating "under one roof" preschool, health-care and social assistance facilities. By using existing infrastructure and integrating three closely related areas, the Government hopes to reduce the costs and be in a position to provide for preschool facilities across the country.

66. Preschool is especially necessary for children from disadvantaged communities such as the Basarwa, who face steeper hurdles in adjusting to school life. The authorities are aware of the importance of preschool education as a condition of an improved quality of learning. The ninth National Development Plan shows keen awareness, on the part of the Government, of the value of preschool and the recognition of its own capacity constraints.

2. Intercultural and multilingual education

67. One of the major challenges the Government has to face is the intercultural and multilingual dimension of the country. It is important for the cognitive development of the individuals to be taught in his or her mother tongue and to see that their culture is acknowledged as an integral part of the culture of the country as a whole. The Special Rapporteur believes that the mitigated learning achievements in Botswana are partly due to the Government policy of promoting bilingualism. He is convinced of the negative impact on students of the brutal shift from their mother tongue at home to another language at primary school and of its negative consequences for the learning process. Education in the mother tongue contributes to early concept formation, critical thinking and self-esteem, all of which are fundamental for academic achievement.

68. While most African countries are multilingual, language education policies differ from one country to another. Some countries have more than one official language, including local languages. Some countries will privilege one language while others encourage multilingualism. The earlier models are characterized by centralized curricula while the latter rely on a more decentralized system.

69. As mentioned earlier in the present report, Botswana has declared English the official language while Setswana was adopted as the national language. Although official records and data mention that Tswana-speaking people represent 70 per cent of the population, these figures are challenged by some scholars who believe they represent only 30 per cent of the population. The Special Rapporteur noted that the curriculum reflects exclusively the Tswana culture,

ignoring to some extent other elements of the Botswana culture and thus, non-Tswana members of the population. He was also informed that, in practice, as English is used more than Setswana, even Setswana could eventually disappear, at least in its written form, a danger that is even greater for the languages of the minorities. The Special Rapporteur understands the difficulties expressed by the Ministry of Education as to the need to invest in training of teachers, or production of school materials in some languages which may not have an elaborated written form, as well as many other constraints. He welcomes the information according to which the Government was considering the possibility of introducing a third language at primary and junior secondary level and looks forward to receiving more information on that project. While acknowledging the constraints, the Special Rapporteur nonetheless believes that multilingual education is an integral part of a successful and quality education and that, building on its achievements, Botswana could rise to the challenge of providing multilingual education.

70. The Special Rapporteur also believes in the importance of intercultural education as the corollary of multilingual education. While the thrust of mother tongue education is to learn in one's own language about one's own culture, intercultural education assumes a multilingual and multicultural classroom, in which learners are eager to learn other languages and about other cultures. All cultures and languages are valuable learning resources to acquire literacy and critical thinking skills. Intercultural education would help promote mutual respect and acknowledgement of the value of other cultures. It would promote human rights education, peace and development, and would certainly help address conflict between the Government and the Basarwa/San and thus help promote national harmonized development. The Special Rapporteur regrets the views of the Government, as mentioned in the National Action Plan for Education (2002), that diversity is a problem that hinders the provision of adequate and appropriate education. He believes, on the contrary, that multiplicity and diversity are a strength the country should build upon to reinforce its education system and development. The government plan to implement the Revised National Policy on Education recommendation on preschool education seems an excellent opportunity to introduce intercultural education. It would be counterproductive to teach preschool pupils to speak, read and write in a language other than their home language and not using their own cultural background and references.

3. Towards stronger gender equality

71. The school curriculum and environment should help sustain progress towards gender equality. Gender equality has been achieved in access to education, and it seems dropout rates among girls and boys are similar, although the reasons are distinctly gender-driven - pregnancies and family responsibilities at home for girls, and work to help the family financially for boys. However, the education system still has to make progress towards more gender-neutral teaching and should help to combat remaining stereotypes. The challenge is, among others, to facilitate the entry of men and women in disciplines traditionally dominated by the other sex, for instance to entice more women into engineering studies and scientific occupations and more men into nursing careers. Another element would be to eliminate gender-specific constraints on learning. Girls should be relieved of household responsibilities beyond a proportional sharing of tasks in a family.

72. Creative ways have to be found to keep children (boys and girls) in school. According to Vision 2016, introducing universal and compulsory education while outlawing child labour would be the key. Criminalizing child labour could reduce the demand for child work and would encourage children to remain in schools, and their families to give support.

4. The impact of HIV/AIDS

73. The 2003 Sentinel Surveillance Report (NACA) 2003 figures suggest that young people are most affected by HIV/AIDS. HIV-prevalence among pregnant women aged 20 to 24 is 38.6 per cent; and 42.8 per cent among those aged 25 to 29 while prevalence for 15- to 19-year-olds is estimated at 22.8 per cent. Prevalence trends among the 15- to 19-year-olds in the 2004 Botswana AIDS Impact Survey (BAIS II) show that for every HIV-positive boy, there are three HIV-positive girls. Some cultural and historical beliefs regarding sexual practices and relations, like traditional puberty rites have undergone particular re-/misinterpretations in the context of HIV. A good example is the practice of *go ithlatswa madi*²² or older men having sex with virgin girls mistakenly believing they will be cleaned of all sexually transmitted diseases (STDs). This practice encourages intergenerational sex, facilitating rapid transmission of STDs and making it difficult to stop the spread of HIV/AIDS. Schools have a clear role to play in preventing and combating the spread of the virus, in particular by fighting against such myths and stereotypes.

5. Corporal punishment

74. The Special Rapporteur was surprised to note that the Revised National Policy on Education contains a full section on corporal punishment. His attention was drawn to this issue by various NGOs which advocate for the abolition of the practice. He was informed that physical punishment was a normal practice and considered a reasonable way to ensure discipline. In some instances, children were victims of severe abuse, especially those living in hostel facilities and not benefiting from the close presence and protection of their families. The Special Rapporteur regrets not having an opportunity to discuss corporal punishment with the authorities and hopes the issue will be discussed in follow-up to his visit, and resolved in accordance with international human rights standards, especially the provisions of the Convention on the Rights of the Child, with a specific mention of its article 28, paragraph 2. The educational environment should be human rights sensitive and human rights driven.

IV. CONCLUSIONS AND RECOMMENDATIONS

75. **Access to basic education has been virtually achieved even at the higher standard of 10 years of basic education. Gender parity is also a reality as far as access to education is concerned. However, the Special Rapporteur on the right to education notes that the lack of a rights-based approach to education in Botswana has led to disparity in educational achievement. It also seems to play a role in justifying the decision to reintroduce school fees, which he sees as a major step backwards in the country's achievements with regard to education. The Special Rapporteur is particularly concerned by the potential negative consequences of the reintroduction of fees, especially taking into**

account that one of the main challenges still facing the education system is the relatively high dropout rate at the secondary level. The challenge of Botswana is to sustain and reinforce enrolment and retention rates; address the special needs of vulnerable groups and of its indigenous populations; improve the quality of education in the public system; improve teachers' training as well as their living conditions; and to maintain the capacity of the education system on the face of an intense HIV/AIDS onslaught.

76. The Special Rapporteur encourages the Government of Botswana to:

(a) Ratify the International Covenant on Economic, Social and Cultural Rights as soon as possible, as a way of strengthening its commitment to translating economic, social and cultural human rights norms into the national agenda for development;

(b) Adopt a rights-based approach to education by providing a constitutional guarantee to education;

(c) Review the mandate and scope of activities of the Ombudsman or establish a national human rights institution, in accordance with international standards, as a means of strengthening human rights capacity within the country;

(d) Withdraw the measure aiming at reintroducing school fees at junior secondary level and consider alternative ways to ensure the sustainability of education in spite of financial constraints;

(e) Analyse the factors that cause delays in the distribution of books and adopt measures to guarantee timely delivery to all schools in the country;

(f) Establish and implement rationalized policies for the training, recruitment and affectation of teachers;

(g) Engage, as a matter of priority, in the training of teachers coming from the most remote areas;

(h) Provide the same facilities for all teachers wherever they are affected;

(i) Ensure that foreign and refugee children have the same access to education as nationals;

(j) Develop special projects and programmes for orphaned adolescents who are forced into work to support their families, ensuring their integration into school and the provision of support to their families;

(k) Elaborate and disseminate accessible versions of the chapter of the Education Act dealing with the rights of adolescents who are pregnant or raising children, as well as evaluate programmes of sex education and explore new approaches empowering adolescents to exercise responsibly their sexual and reproductive rights;

(l) Develop training programmes to increase the gender awareness of teachers, both women and men, and review all curricular materials to eliminate any discriminatory content;

(m) Develop new approaches to education more responsive to the needs of nomadic populations, including mobile schools and the training of teachers from such communities as well as their employment with adequate salaries and working conditions;

(n) Evaluate the educational achievement of the school for visually impaired children and establish additional institutions and mechanisms to ensure provision of education for children with disabilities and facilitate their access to secondary schools;

(o) Bring together experts from different ethnic backgrounds to prepare a pilot programme for intercultural education which could be implemented on an experimental basis;

(p) Adopt legislation to abolish use of corporal punishment in schools;

(q) Request support and technical advice from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to develop a national strategy according to the World Programme for Human Rights Education.

77. The Special Rapporteur encourages OHCHR to ensure that it can offer any assistance requested by the Government of Botswana, particularly with regard to human rights education.

Notes

¹ Government of Botswana, Millennium Development Goals, Status report 2004, Achievements, future challenges and choices, p. 14.

² Ibid., p. 16.

³ Analysis of child-focused indicators; Child rights: the sure way to Vision 2016; UNICEF and Botswana Central Statistics Office.

⁴ Ibid.

⁵ The 26 languages are: Afrikaans, Chikihane, Gana, Gwi, Hua, Ikalanga, Isendebele, Ju'hoan, Khwedam, Kua, Kx'au ein, Nama, Nambya, Naro, Otjiherero, Rigciriku, Sbirwa, Setswapong, Shekgalagari, Shiyeyi, Shua/Tshwa, Silozi, Thimbukushu, Tsowa, Xóõ and Zezuru. Among the above languages, the Gana, Gwi, Hua, Ju'hoan, Khwedam, Kua, Kx'au ein, Naro, Shua/Tshwa, Tsowa and Xóõ are considered to be used by Botswana indigenous populations known as Basarwa/San/Kheosan.

⁶ Setswana refers to the language spoken by eight recognized tribes in Botswana. The term Tswana refers to the cultures, including the dialect of these tribes. These terms are sometimes used interchangeably.

⁷ Hasselbring, Sue, "A sociological survey of the languages in Botswana", Sociolinguistic Studies of Botswana Languages Series, 2000, vol. 1, Gaborone: Tasalls Publishing and Books.

⁸ In its concluding observations, the Committee on the Elimination of Racial Discrimination stated at its sixty-first session that "The Committee notes that the cultural and linguistic rights of the Basarwa/San are not fully respected, especially in educational curricula and in terms of access to media. The Committee recommends that the State party fully recognize and respect the culture, history, languages and way of life of its various ethnic groups as an enrichment of the State's cultural identity, and adopt measures to protect and support minority languages, in particular within education", A/57/18, para. 305.

⁹ From 65 years in 1991 to 56 years in 2001.

¹⁰ Infant mortality increased from 51 to 55 deaths per 1,000 live births, child mortality from 16 to 19 deaths per 1,000, while the under-five mortality increased from 66 to 73 deaths per 1,000 live births.

¹¹ Government of Botswana, Millennium Development Goals, Status report 2004, Achievements, future challenges and choices and Report of the evaluation of Ringing the Bell: a re tsogeng project, Botswana network of people living with HIV/AIDS (BONEPWA), Ministry of Education and UNICEF, February 2005.

¹² Prevalence rates have stabilized since 1999, particularly in urban areas. Rural prevalence rates continued to rise, with rural women having slightly higher prevalence rates than urban women.

¹³ Examples would be chieftainship and priesthood.

¹⁴ A non-governmental organization, Women against rape, reported a steady increase in rape cases lodged annually with it from 8 in 1996, through 20 in 1997, 30 in 1998, 27 in 1999, to 35 in 2000.

¹⁵ One primary and pre-primary school and a secondary school.

¹⁶ The Revised National Plan for Education together with the ninth National Development Programme and the country's Vision 2016, coinciding with the Jomtien Declaration on basic education, have helped the country redefine the concept of basic education. It now refers to 7 years of primary education plus 3 years of junior secondary school, totalling up to 10 years of basic education.

¹⁷ Many of the people met by the Special Rapporteur noted that consultations were exclusively held in big cities where most of the population is educated and in a less precarious economic situation than in rural areas.

¹⁸ Villages with 500 or more people.

¹⁹ Towards multicultural education for Khoesan peoples of Botswana: Breaking barriers, expanding opportunities and exploring possibilities; paper presented at the Regional Mother Tongue Conference on “Multilingualism in Southern African Education: Celebrating and Sharing Experiences and Practices”, 1-2 June 2005, Lydia Nyati-Ramahobo.

²⁰ The programme aims at providing general assistance to people in remote areas under the responsibility of the Ministry of Local Government.

²¹ Government of Botswana, Millennium Development Goals, Status report 2004, Achievements, Future Challenges and Choices.

²² Translated as “cleansing one’s blood”, *ibid.*
